

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JAMES D. COX

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:10CV421-LG-RHW

EXIT 50 HOTELS CORP.

DEFENDANT

PROPOSED FINDINGS OF FACT AND RECOMMENDATION

This matter is before the Court *sua sponte*. On August 20, 2010, Plaintiff James D. Cox filed a complaint against Defendant Exit 50 Hotels Corp. alleging violations of the Fair Labor Standards Act, wrongful termination, and retaliatory discharge. On May 2, 2011, counsel for Plaintiff filed a [8] Motion to Withdraw as Counsel of Record. In the motion, counsel indicated that she had been unable to communicate with her client and was having difficulty locating Plaintiff. Plaintiff then failed to appear for a deposition scheduled for May 13, 2011. On May 24, 2011, the Court entered an [10] Order granting the motion to withdraw and allowing Plaintiff until June 23, 2011, to advise the Court in writing if he wishes to prosecute his case. The Court further cautioned Plaintiff "that failure to respond to the Court's order will result in dismissal of his lawsuit." The Order of May 24, 2011 was mailed to Plaintiff's last known address. On May 31, 2011, the Order mailed to Plaintiff was returned as "undeliverable" with the notation "moved left no address unable to forward". The June 23, 2011, deadline to advise the Court whether Plaintiff wishes to continue to prosecute his lawsuit has passed. Plaintiff has not communicated with the Court, nor has he entered a notice of change of address.

RECOMMENDATION

Based on the foregoing, the undersigned recommends that Plaintiff's lawsuit be dismissed

without prejudice for failure to prosecute.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to this report must serve and file written objections within ten (10) days after being served with a copy unless the time period is modified by the District Court. A party filing objections must specifically identify those findings, conclusions and recommendations to which objections are being made; the District Court need not consider frivolous, conclusive or general objections. Such party shall file the objections with the Clerk of the Court and serve the objections on the District Judge and on all other parties. A party's failure to file such objections to the proposed findings, conclusions and recommendation contained in this report shall bar that party from a de novo determination by the District Court. Additionally, a party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in this report within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed **factual findings and legal conclusions** that have been accepted by the district court and for which there is no written objection. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SO ORDERED, this the 7th day of July, 2011.

s/ Robert H. Walker
UNITED STATES MAGISTRATE JUDGE